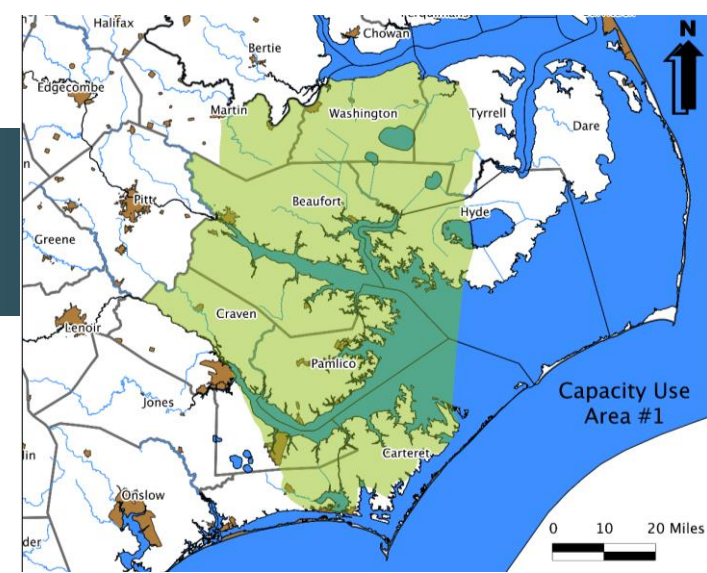




April 13, 2016
Department of Environmental Quality



Regulation of Use of Water Resources



§143-215.11 - .22 Water Use Act of 1967 (Capacity Use Areas Law)

- In 1967 NC enacted the first Capacity Use Law by a southeastern state in direct response to ground water problems that resulted from mining phosphate deposits in Beaufort County.
- **§ 143-215.13. Declaration of capacity use areas.**
 - (a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.
- **§ 143-215.22. Law of riparian rights not changed.**

Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.

Strengths & Weaknesses of the Water Use Act

- Applies to **all** water withdrawals 100,000 gallon per day (gpd) or greater, potentially both surface and/or ground waters.
 - Does **NOT** regulate small individual users less than 10,000 gpd.
- Can be a potential solution for large regional water use issues where individual water withdrawals impact other users.
 - NOT a good solution for small local water use problems.
- Predates the Clean Water Act and includes water quality provisions . Never been used to resolve water pollution problem.
- Not a “*one size fits all*” solution. Rule making process to design a withdrawal permitting process for specific problems for a defined geographical area of the State.

History of Environmental Management Commission & Capacity Use Areas

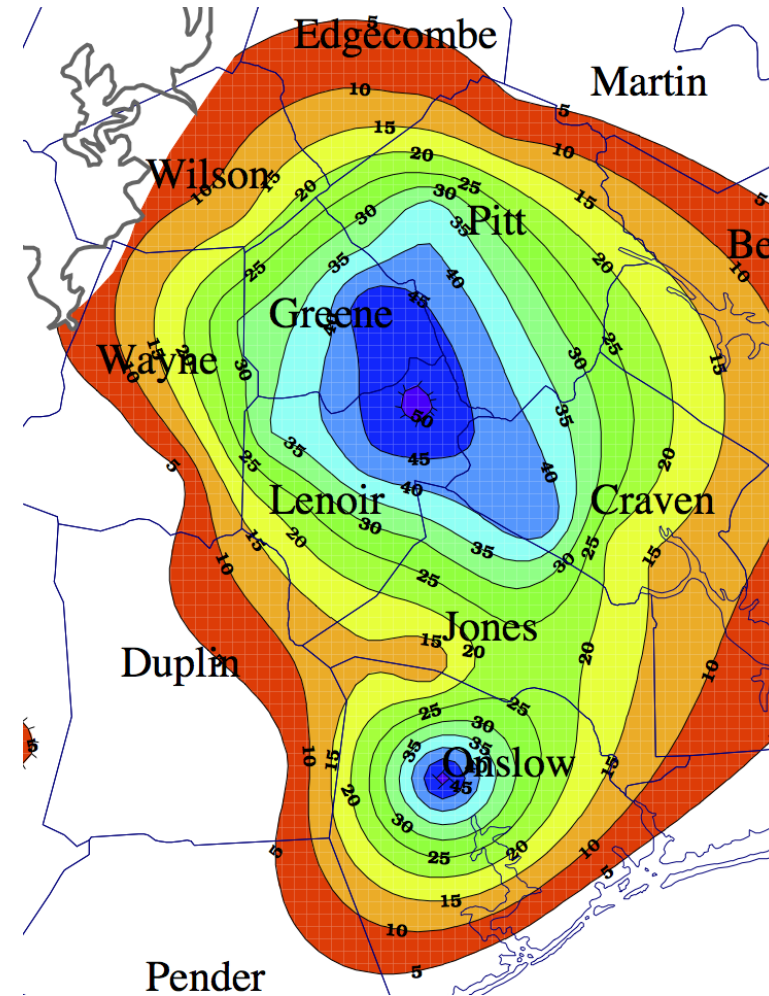
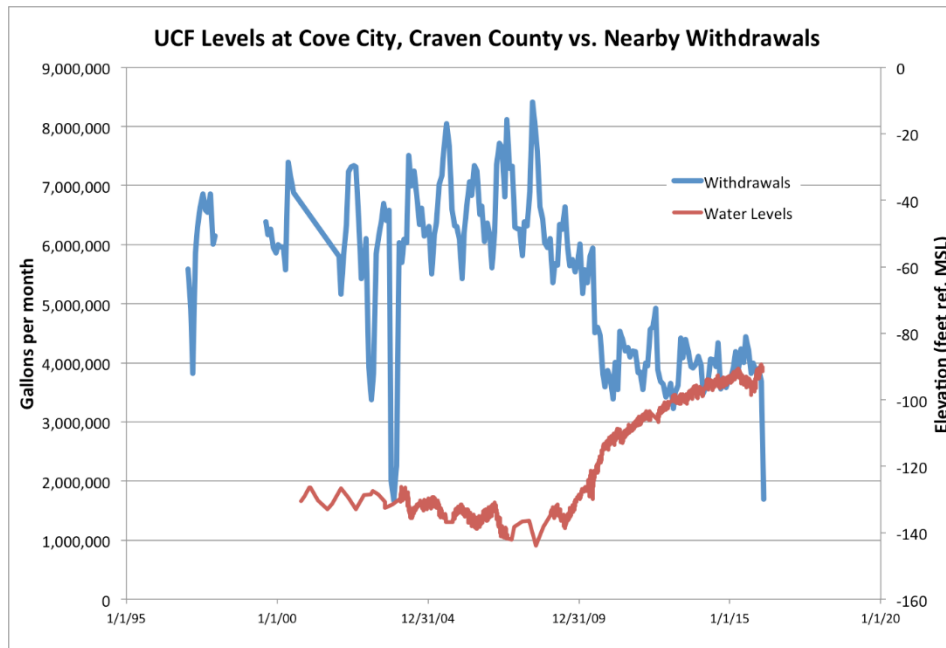
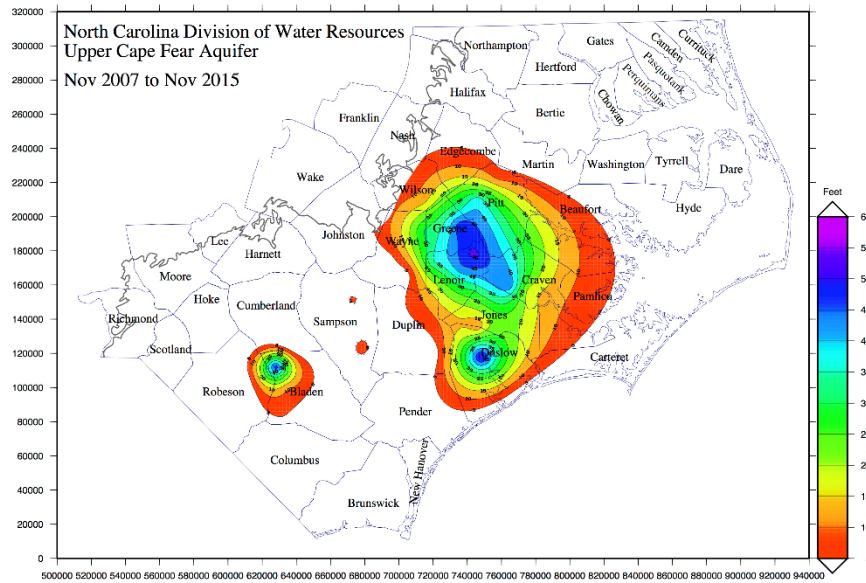
- Capacity Use Area 1 – Established in the early 1970's because of the phosphate mining in Beaufort County.
- Yadkin River – Late 1970's concern for a proposed nuclear power plant in Davie County. The proposal was rejected and affirmed by the North Carolina Court of Appeals.
- Eno River – Concerns in the mid-1980's of inadequate flows in the Eno River in the area of the Eno River State Park. The fall of 1988 the EMC accepted a voluntary management plan (voluntary capacity use area)
.[\(http://www.ncwater.org/Permits_and_Registration/Capacity_Use/Eno_River_Management/\)](http://www.ncwater.org/Permits_and_Registration/Capacity_Use/Eno_River_Management/)
- Currituck County Outer Banks – 1991, Division of Water Resources recommended a capacity use area not needed.
- Roanoke Island – 1992, Division of Water Resources recommended a capacity use area not needed.
- Central Coastal Plain Capacity Use Area – Rules became effective August 1, 2002. Superseded Capacity Use Area 1. (<http://www.ncwater.org/?page=49&menu=Home>)
- Southern Coastal Plain – 2004, a regional solution was implemented and a capacity use area not needed.

Central Coastal Plain Capacity Use Area

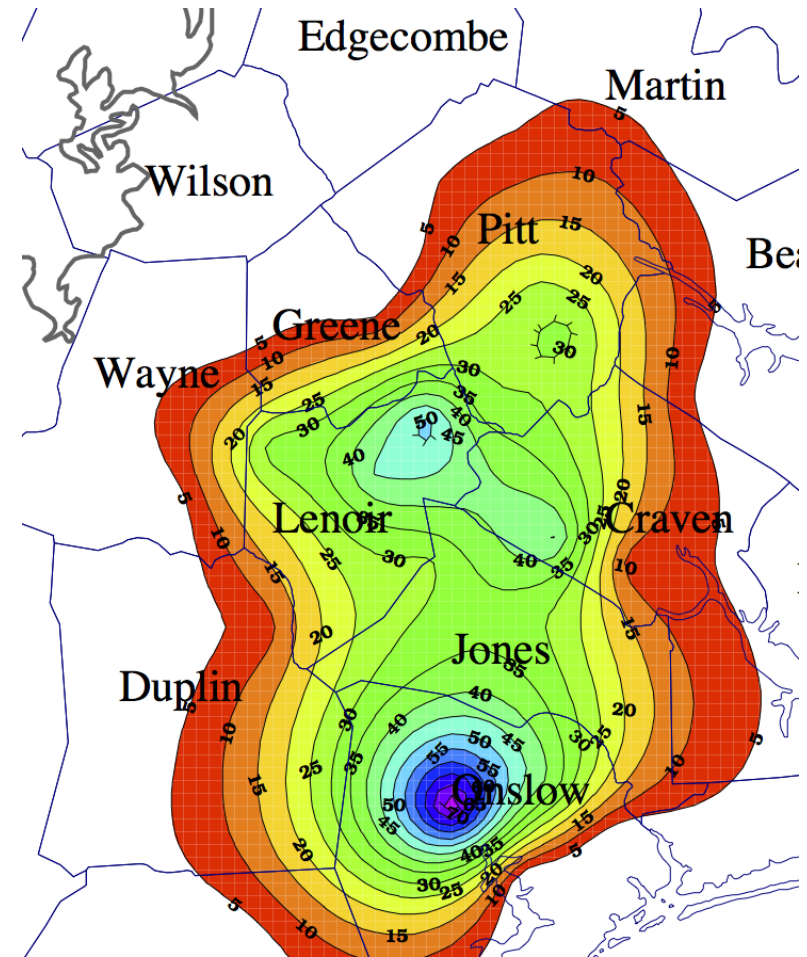
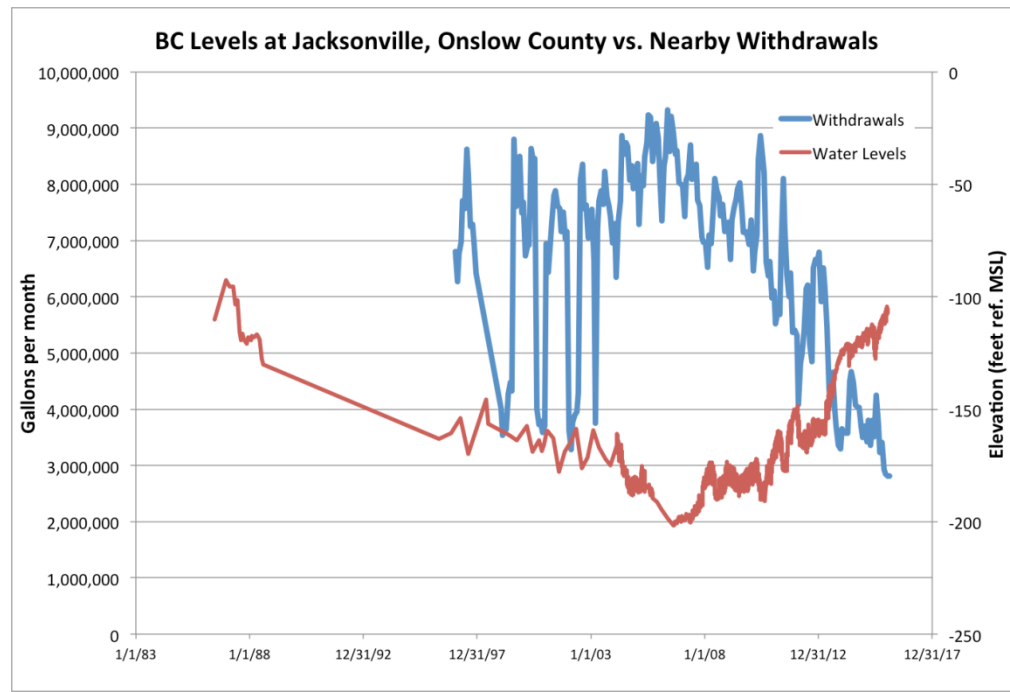
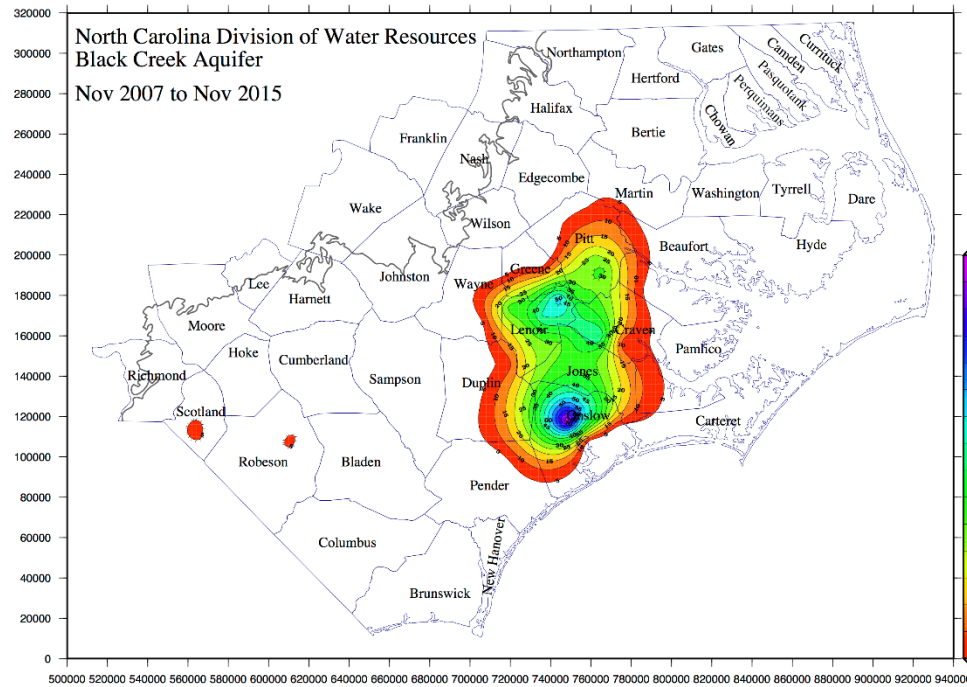
- The CCPCUA came about in 2002 –after an investigation and ~4 year rule-making process
- It covers 15 counties including much of the CUA #1 area to maintain protection of the Castle Hayne aquifer
- Defined as a result of overuse of the Cretaceous aged (Black Creek and Upper Cape Fear) aquifers and the concern about saltwater encroachment
- Evidence of dewatering of the aquifers and sharp declines in the water levels
- Certain users faced severe reductions (between 30 and 75%) over a 16 year period from their 1997-2000 withdrawals
- Forced investment in alternate water sources, especially surface water and shallower ground water
- **Water level recoveries are occurring in the endangered aquifers**



Upper Cape Fear Aquifer Recovery



Black Creek Aquifer Recovery



3 Step Process

1. Environmental Management Commission (EMC) creates a “capacity use area” (CUA).
 - **§ 143-215.13. Declaration of capacity use areas.** (b) Within the meaning of this Part "a capacity use area" is one where the Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.
2. Rule-making phase to develop the permitting program to respond to the quantity and/or quality problems of the CUA.
 - **§ 143-215.14. Rules within capacity use areas; scope and procedures.** (a) Following the declaration of a capacity use area by the Commission, it shall prepare proposed rules to be applied in said area, containing such of the following provisions as the Commission finds appropriate concerning the use of surface waters or groundwaters or both:
3. Issuance of withdrawal permits for withdrawals over 100,000 gpd.
 - **§ 143-215.14. Rules within capacity use areas; scope and procedures.**
 - **§ 143-215.15. Permits for water use within capacity use areas – Procedures.**

Summary

- Capacity Use Areas are a useful tool but should be used only vary sparingly, in emergency-type situations when all other possible options have been excluded

